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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:

Petition for Rulemaking
To Amend Eligibility Requirements in Part 78
Regarding 12 GHz Cable Television
Relay Service

CS Docket No. 99-250

RM-9257

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

**COMMENTS OF KASTAR SATELLITE COMMUNICATIONS CORP.,
KASTARCOM. WORLD SATELLITE, LLC AND @CONTACT, LLC**

KaStar Satellite Communications Corp. ("KaStar"), KaStarcom. World Satellite, LLC ("KaStarcom") and @Contact, LLC (collectively, the "KaStar Companies"),¹ by counsel and pursuant to Section 1.415 of the Commission's Rules, hereby submit their Comments in the above-captioned proceeding.² For the reasons discussed herein, the KaStar Companies support the Commission's proposal to make multichannel video programming distributors ("MVPDs")

¹ KaStar is the managing member of KaStar 73 Acquisition, LLC and KaStar 109.2 Acquisition, LLC, which are authorized to construct, launch and operate two Geostationary Orbit Fixed Satellite Service ("GSO FSS") satellites in the Ka-band. See *KaStar Satellite Communications Corp.*, 13 FCC Rcd 1366 (Int. Bur. 1997). KaStarcom has pending an application to launch and operate two GSO FSS satellites in the Ka-band. @Contact has pending an application to launch and operate a Non-Geostationary Orbit Fixed Satellite Service ("NGSO FSS") system. Although these entities have some common ownership, they are controlled by different parties.

² See *Petition for Rulemaking to Amend Eligibility Requirements in Part 78 Regarding 12 GHz Cable Television Relay Service*, FCC 99-166 (released July 14, 1999) (the "Notice"). The KaStar Companies filed Comments and Reply Comments in response to the Commission's notice of proposed rulemaking in *Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use*, FCC 98-235 (released September 18, 1998) (the "18/28 GHz Proceeding").

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eligible to use 12 GHz Cable Television Relay Service ("CARS") for the delivery of video programming.³ By making this spectrum available to private cable operators ("PCOs"), as well as other terrestrial Fixed Service ("FS") operators presently authorized in the 18 GHz band, the Commission can achieve the twin objectives of allocating sufficient contiguous spectrum in the 18 GHz band to the FSS on a primary basis, thereby allowing blanket licensing of earth stations, while at the same time permitting FS operators to access primary spectrum that will be free of the limitations presented by future FSS users and that will facilitate competition in the multi-channel video marketplace. Further, if the Commission adopts its proposed rules and extends eligibility to include FS users currently occupying the 18 GHz band, incumbents can be relocated to the 12 GHz CARS band consistent with the plan advanced by the KaStar Companies in the *18/28 GHz Proceeding*.⁴ Rarely is such a "win-win" opportunity presented.

Introduction

The KaStar Companies are independent entrepreneurial businesses seeking to establish competitive global satellite communications systems. Among the services they plan to provide to the public are two-way Internet, video and multimedia services. Whereas terrestrial and wired services primarily target commercial businesses and high-end users in densely populated areas, FSS systems can provide ubiquitous services to rural and urban locations on an equal basis.

Since KaStar and the other Ka-band licensees received their authorizations in May of 1997, they have worked diligently to resolve the remaining technical issues necessary for the launch of their respective systems. They have jointly discussed standards for blanket licensing of FSS earth

³ As noted in the *Notice*, the CARS band is the 12.7-13.2 GHz frequency band.

⁴ See KaStar Companies Reply Comments ("18/28 GHz Reply Comments"), filed December 21, 1998, at 8-12.

stations and for specified spectrum for inter-satellite links, and participated in other FCC and International Telecommunications Union ("ITU") proceedings. KaStar has committed a considerable amount of time, money and resources designing its satellite system and contracting with satellite manufacturers and strategic partners to fund, construct and launch its satellites.

Likewise, KaStarcom and @Contact have invested considerable resources to design and develop new satellite services. On December 22, 1997, KaStarcom and 12 other applicants filed applications for new GSO FSS systems in the Ka-band. On the same date, @Contact and four other applicants filed applications for NGSO FSS systems in the Ka-band. During the past year, these applicants have worked with the Commission to prepare the necessary filings with the ITU to establish priority status for domestic and international orbit locations. Currently, the GSO FSS applicants are continuing their efforts to achieve an acceptable orbital assignment plan.

The KaStar Companies are active participants in the *18/28 GHz Proceeding*, which seeks to resolve spectrum allocation issues among FSS and FS interests to permit each to operate with a sufficient amount of spectrum, without interference and without unreasonable disruption of service. The KaStar Companies agree with the Commission that the *18/28 GHz Proceeding* is interrelated with the instant proceeding,⁵ and believe that adoption of its proposals here, especially if eligibility is expanded to encourage relocation of incumbent 18 GHz FS users, will pave the way for a resolution of the *18/28 GHz Proceeding* in a manner that appropriately re-designates the 18 GHz band and promotes competition in both terrestrial and satellite services without disrupting existing service.

⁵ See Notice at ¶14.

Discussion

In the *18/28 GHz Proceeding*, FS and FSS interests are engaged in a contentious battle over the Commission's plan to re-structure the 18 GHz band from a shared spectrum scheme to a segmented scheme where specific frequency blocks are set aside for primary FS and FSS service. As could be expected, in general each industry is seeking more primary and less encumbered spectrum than the Commission is proposing to make available. For FSS interests, primary use of a sufficient amount of spectrum is critical to blanket licensing of earth stations.⁶ As the KaStar Companies stated in their Comments in the *18/28 GHz Proceeding*, "[b]lanket licensing would permit manufacturers to mass produce FSS earth stations, thereby reducing their costs . . . which would, in turn, instill confidence in potential strategic partners both in terms of removing regulatory questions and reducing equipment costs." These benefits would, in turn, lead to lower subscriber rates and thereby permit satellite business to compete more effectively with each other and existing services.

In the *18/28 GHz Proceeding*, the KaStar Companies proposed a variation of the Commission's re-designation plan that would strike the appropriate balance between the needs of FSS operators to access a sufficient amount of contiguous 18 GHz spectrum and facilitate blanket licensing, and the needs of FS systems to minimize disruption of existing service and provide for future expansion. One element of this plan proposed to relocate incumbent FS stations operating in the 18.55-18.8 GHz and 18.6-18.82 GHz bands to other frequency bands, freeing up that

⁶ See Comments of the KaStar Companies ("*18/28 GHz Comments*"), filed November 19, 1998, at 5. As discussed there and in the *18/28 GHz Reply Comments*, GSO FSS systems must operate in segments of 125 MHz, and the presence of CARS facilities in the 18.55-18.58 GHz band and Fixed Service Point-to-Point services in the 18.6-18.82 GHz band would preclude such operation and defeat the purpose of redesignating the 18 GHz band. See *18/28 GHz Reply Comments* at 7.

spectrum (and adjacent spectrums) for primary FSS use.⁷ In their 18/28 GHz Reply Comments, the KaStar Companies suggested that these services could be relocated to the 13 GHz band.

In this proceeding, at the urging of OpTel, Inc. ("Optel"), a leading PCO, the Commission has proposed to make all MVPDs eligible to hold CARS band.⁸ In so doing, the Commission has acknowledged the technical and capacity restrictions PCOs currently face in the 18 GHz band and the anticipated future limitations on continued FS use of that band resulting from emerging satellite business.⁹ The KaStar companies submit that, by expanding eligibility of the CARS band to include PCOs and other MVPDs, a sufficient amount of unencumbered contiguous spectrum in the 18 GHz band can be made available to prospective FSS users.

In addition to adopting this plan, the Commission should also encourage existing FS users of the 18 GHz band to relocate to the 12 GHz CARS band. This would involve two modifications to the Commission's proposal. First, in addition to MVPDs, eligibility for the CARS band should include CARS stations currently operating in the 18.55-18.8 GHz band and Fixed Service Point-to-Point stations currently operating 18.6-18.82 GHz band. Second, to accomplish the migration of these incumbents, the Commission should implement the relocation plan discussed in the KaStar Companies' 18/28 GHz Reply Comments.¹⁰

⁷ See 18/28 GHz Comments at 9-10.

⁸ MVPDs include PCOs, cable operators, wireless cable operators, DBS systems and TVROs.

⁹ See Petition for Rulemaking of Optel ("Optel Petition") at 4-8.

¹⁰ Under this plan, FS services would have an absolute right to occupy the 18 GHz band until January 1, 2001 and could be relocated on a voluntary basis. Thereafter, until January 1, 2004, incumbents could be relocated at the option and expense of the FSS operator. Thereafter, any remaining FS licensees would become secondary users no longer entitled to interference protection or relocation compensation. The plan further advocates negotiation periods and

By adopting this proposal, the Commission can satisfy the interests of both FS and FSS interests in ways that it cannot in either this proceeding or the *18/28 GHz Proceeding* alone. MVPDs would be eligible to apply for as much as 500 MHz for their video services in spectrum that, according to PCO interests, would cover a greater area, would be more efficient, would reduce construction costs and thus would foster video competition.¹¹ MVPDs would have less incentive to file for new stations in the 18 GHz band because of the benefits of the 12 GHz CARS band. Incumbent FS users also would be encouraged to migrate from the 18 GHz band to the 12 GHz band, would obtain these same benefits and, further, would not face the prospect of service disruptions or technical coordination of grandfathered services. The expanded eligibility and migration of existing users will alleviate the spectrum access limitations that FS users fear, while at the same time enabling a sufficient amount of unencumbered contiguous 18 GHz spectrum to be set aside for FSS users to permit blanket licensing. This plan resolves difficult spectrum redesignation issues for both FS and FSS interests and provides competitive benefits that serve the public interest.

relocation cost formulas to permit the orderly administration of the relocation process. *See 18/28 GHz Reply Comments at 8-12.*

¹¹ *See Optel Petition at 4-5; RCN Telecom Services, Inc. Comments in Support of Petition for Rulemaking at 2-3.*

Conclusion

In view of the foregoing, the KaStar Companies urge the Commission to adopt its proposal to make MVPDs eligible to apply for CARS band spectrum, as modified as discussed herein to include incumbent 18 GHz FS users.

Respectfully submitted,

**KASTAR SATELLITE COMMUNICATIONS CORP.
KASTARCOM. WORLD SATELLITE, LLC
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August 16, 1999

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